IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/10/2004

CORAM

THE HONOURABLE MR.JUSTICE P. SATHASIVAM
AND
THE HONOURABLE MRS.JUSTICE R. BANUMATHI

Criminal Appeal No.1195 of 2002

Ranganathan .. Appellant

-vs-

State rep. by Inspector of Police
Perundurai Police Station
Erode District. .. Respondent

This criminal appeal is preferred under Sec.374 of the Code of Criminal Procedure against the conviction and sentence passed by the learned Principal Sessions Judge, Erode District in S.C.No.234 of 2000 dated 17.06.2002.

For Appellant : Mr. N. Manokaran

For Respondent : Mr. V.M.R. Rajendran
Additional Public Prosecutor

:JUDGMENT
(Judgement of the Court was delivered by P. SATHASIVAM,J.,)

One Ranganathan, single accused in S.C.No.234 of 2000 on the file of Principal Sessions Judge, Erode questioning the conviction and sentence of imprisonment for life under Section 302 IPC, has filed the above appeal.

2. The case of the prosecution is briefly stated hereunder:
The deceased Kannammal is the wife of the accused. Their marriage took place 10 years prior to the date of occurrence. They had begotten two male children. The accused got suspicion about the illicit intimacy between the deceased and PW.7, due to w hich, the deceased was living with her parents' house at Tiruppur and she was working in a Banian Company. On 26.05.2000, the accused left for Tiruppur in his TVS 50 moped, met his wife / deceased at the bus stand and requested her to visit Perundurai t o see their son. On their way to Perundurai around 11.00 p.m., they reached the unmanned Railway level crossing at Pungampaddi. At that time the accused took an Aruval MO.1 and committed the murder of his wife.

(a) On 27.05.2000, at about 12.00 noon, PW.2 (Village Menial) heard the news and came to the scene of occurrence at about 12.15 p. m., and thereafter he reported the matter to the VAO (PW.1). Both of them came to the scene of occurrence and thereafter PW.1 (VAO) went to Perunthurai Police Station and gave a complaint - Ex.P.1. PW.17 Sub-Inspector of Police received the complaint and registered a case under Section 302 IPC on 27.05.2000.

(b) On information, the Inspector of Police (PW.20) reached the police station at about 4.30 p.m., and received the printed F.I.R. and took up the investigation. At 5.00 p.m., he came to the scene of occurrence, and in the presence of witnesses prep ared observation mahazar (Ex.P.2) and Rough Sketch (Ex.P.25). He caused the scene to be prohotographed through PW.4. Thereafter, PW.2 0 conducted inquest over the body of the deceased. PW.1, PW.2 and Prakash, Muthusamy, Loganathan, Selvam, Arumugam, Sye d Gujrathullah, Periyasamy and Perumal were examined during inquest. Ex.P.27 is the inquest report. PW.20 gave requisition for postmortem through PW.15 (Police constable) and directed him to keep the dead body in the Government Hospital, Erode since t he identity was not known. Thereafter, PW.20 seized blood stained earth (MO.2) and sample earth (MO.3). Further, PW.20 seized MO.1 Aruval and MO.5 Bus ticket from the scene of occurrence under Ex.P.3 attested by PW.2.

(c) PW.11 Doctor attached to the Government Hospital, Erode on receipt of Ex.P.8 requisition for postmortem, started autopsy at 11.3 0 a.m., on 28.05.2000 and found the following 11 injuries.

" 1. A cut injury of 15cm length x 7cm x bone deep starting from the lateral end of the right mandible to the back of the neck.
2. A cut injury of 6cm x 3cm x 4cm present 2 cm below the No.1 injury right side to the neck.
3. A cut injury of 7cm x 4cm x 4cm present 3cm below the 2nd injury.
4. A cut injury of 8cm x 5cm x 3cm over the right shoulder posterior aspect.
5. A cut injury of 4cm x 3 cm over the back in the left side in between the 7th and 8th rib, depth enters into the pleural cavity. Direction of the wound downwards and medially.
6. A cut injury of 10cm x 5cm x bone deep starts from the lateral and of the right eye to the right temporal region. The skin in the right ear hanging as flab.
7. A cut injury of 6cm x 3cm x bone deep over the right side of the occipital region.
8. A cut injury of 3cm x 1cm x bone deep over the left parietal region.
9. A lacerated injury of 9cm x 5cm x bone deep over the right wrist and dorsum of the hand. Skin over the wound missing.
10. A cut injury of 2cm x 1cm x 1cm over the left shoulder infront.
11. Abrasion of varying sizes found over the lower limbs below the knees. Over the abdomen and left upper limb. D.d. Of wound No.5 fracture of 6th, 7th and 8th ribs on that side present. Lacerated injury of 3cm x 1cm x 1cm and 2cm x 1cm x 1cm in the l ower lobe of left lung towards D.D. Of wound No.1 underlying great arteries and veins (carotid and jugular) cut. Muscles and tendons cut. No injuries noted over the pernotonium. "
She opined that the deceased would appear to have died of shock and

haemorrhage due to the multiple injuries sustained by her, about 24 to 36 hours prior to autopsy. Ex.P.7 is the postmortem certificate issued by PW.11.

(d) PW.20 gave requisition to preserve the head of the dead body, viscera, blood and thumb impression under Ex.P.8. PW.3, PW.4 and PW.1 7 were examined by PW.20. On 28.05.2000, the postmortem doctor PW.11 was examined by PW.20. PW.20 gave requisition for chemical analysis of the material objects, viscera and hyoid bone. PW.20 examined the Manager of TNSTC Tiruppur Depot regarding the bus ticket MO.5. On 31.05.2000, the dead body was cremated in the Municipal Cremation ground. On 02.06.2000, the c onductor of the bus, who issued MO.5 was examined by PW.20.

(e) PW.6, the father of the deceased found that her daughter did not come to meet him. Hence, PW.6 informed the same to PW.10 and one Balan and requested them to enquire the whereabouts of his daughter with the accused. On enquiry, PW.10 and Balan ca me to know about the fact that the accused murdered his wife Kannammal. Immediately, PW.10 took the accused to the Perundurai Police Station and produced the extra judicial confession (Ex.P.29) on 03.06 .200 0. Immediately after hearing the news, the fat her of the deceased PW.6, his wife and one Poongodi (PW.18) came to the police station where they identified the deceased in MO.6 series - photographs.

(f) In pursuance of the confession statement (Ex.P.10) given by the accused in the Police Station in the presence of the V.A.O. (PW.1 3), the accused took the police party to the place of occurrence and his Village Nallathupalayam and from house, he ha nded over his blood stained shirt - MO.8 and Lungi - MO.9 and the same were recovered under Ex.P.11. Thereafter, the accused took them to his brother's house where from he handed over the TVS 50

moped - MO.10 and the same was recovered under Ex.P.12 att ested by PW.13. PW.21 took over the investigation and after completing the investigation, he laid final report against the accused for offence under Section 302 IPC.

3. The prosecution has examined as many as 21 witnesses, marked Exs.P.1 to P.30 and produced MO.1 to MO.20. When the accused was questioned under Section 313 CRPC, he denied the incriminating circumstances found against him in the evidence and did not examine any one on his side as defence witness. Accepting the prosecution case, the learned Sessions Judge, found the accused guilty under Section 302 IPC and convicted and sentenced him to undergo life imprisonment and also imposed a fine of Rs.5,000 /-, in default to undergo further period of six month rigourous imprisonment. Hence, the present appeal.

4. Heard Mr. N. Manokaran, learned counsel for the appellant and Mr. V.M.R. Rajendran, learned Additional Public Prosecutor.

5. After going through the materials placed before the trial Court, the learned counsel for the appellant has contended that the entire prosecution case rested on the circumstantial evidence, which has not established that it was the accused who commi tted the offence beyond

reasonable doubt. On the other hand, learned Additional Public Prosecutor would submit that the prosecution has established the motive through evidence of PW.6 and PW.7 and the deceased was identified by PW.6 and PW.18, and the shirt and lungi - MO.8 and MO.9, seized from the accused contained blood group of the deceased as evident from the serological report Ex. P.18, and therefore the learned Sessions Judge is right in accepting the case of prosecution and convicting the accus ed under Section 302 IPC.

6. We have carefully considered the rival contentions, evidence and materials on record and the judgement of the trial Court.

7. There is no eye witness to the occurrence. The entire prosecution case rests on circumstantial evidence. Before considering the circumstances which the prosecution relied on in respect of the charge levelled against the accused, it is relevant to refer to the decisions of the Supreme Court as well as this Court relating to acceptance of circumstantial evidence and conviction based on the same. The earliest case is, Hanumant vs. State of Madhya Pradesh reported in A.I.R. 1952 Supreme Court 343. The following statement in para 10 of that judgement are relevant.

"10. ..... In dealing with circumstantial evidence the rules specifically applicable to such evidence must be borne in mind. In such cases there is always the danger that conjecture or suspicion may take the place of legal proof and therefore, it is rig ht to recall the warning addressed by Baron Alderson to the jury in Reg. v. Hodge (1838) 2 Lewin 227) where he said:

"The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was i t, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete. "

It is well to remember that in case where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consi stent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. ...."

8. In the case of Bodhraj vs. State of Jammu and Kashmir reported in 2002 (8) Supreme Court Cases 45, the following conclusion of their Lordships is relevant.

"The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than

the accused being the auth or of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused where there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. "

9. In the case of Manikundu and another vs. State reported in 2004 (1) T.N.L.R. 280 (Madras) (P.Sathasivam and N. Kannadasan,JJ.,) held that,

"11. It has been consistently laid down by this Court as well as the Apex Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are ground to be incompatible with the intention of the accused or the guilt of any other person. As observed in State of Haryana vs. Jagbir Singh and another 2003 (7) Supreme 117, the circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. It is also settled law that where the case depends upon the conclusion draw from circumstances, the c umulative effect of the circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt. "

10. In the light of the above principles, let us consider how far the prosecution has established the guilt of the accused by circumstantial evidence and whether the learned trial Judge is right in accepting the case of prosecution in finding the accus ed guilty. Before going into the circumstances relied on by the prosecution, let us consider the vigourous argument of the learned counsel for the appellant regarding the discrepancy in the evidence of PW.1 , PW.2, statements made in Ex.P.1, P.2, etc., r elating to seizure of saree, blouse and petticoat of the deceased. Mr. N. Manokaran, learned counsel for the appellant would contend that in the light of discrepancy relating to the colour of saree, blouse and petticoat by the prosecution witnesses wit h reference to the statement made in Exs.P.1 and P.2, it is highly doubtful to accept the case of prosecution. In the light of the above submissions, we have carefully perused the evidence of PW.1, PW.2 and Exs.P.1 and P.2. Ex.P.1, the complaint made by PW.1 at the earliest point of time, refers to the colour of the saree of the deceased as yellow. No doubt, Ex.P.2 - Observation Mahazar and the evidence of PW.1 and PW.2 also refer to the colour of saree as yellow. However, while describing the colo ur of the blouse, in Ex.P.1 it is stated as read colour, whereas in Ex.P.2 it is stated as violet colour (thlhky;yp) . PW.1 in his evidence has mentioned the colour of the blouse as blue (thlhky;yp) and PW.2 has mentioned as violet (fj;jhpg;g{). With regard to petticoat, in Ex.P.1 it is stated as a cotton petticoat; in Ex.P.2 - blue colour petticoat and PW.1 and PW.2 have stated as blue colour petticoat. However, PW.15 - Head Constable attached to Perundurai Police Station in his cross examination has stated that he has not seized any red colour blouse and he has also admitted that in Ex.P.13, initially it was mentioned as blue colour cotton petticoat and thereafter it was corrected as green colour cotton petticoat. He also stated that he has no t seized any

blue colour petticoat. According to him, he seized the petticoat which is green in colour. The reference made in Exs.P.1, P.2 and the evidence of PW.1 and PW.2 as well as the statement of PW.1 5 in his cross examination make it clear that t hey are not consistent with the exact colour of saree, blouse and petticoat. The fact remains that the prosecution is not consistent in identifying the above referred material objects which were seized from the body of the deceased and it raises a dou bt regarding the seizure, as claimed by the learned counsel for the appellant.

11. The main circumstance very much relied on by the prosecution and accepted by the learned trial Judge relates to the extra judicial confession made by the accused to one Vedhachalam PW.10 and Balan regarding the occurrence. The fact that the accuse d had made a confession to PW.10 and one Balan itself is highly doubtful. Admittedly, the said Balan has not been examined and according to PW.10, he is no more. Further, PW.10 turned hostile and did not support the case of prosecution. Inasmuch as PW .10 has not supported the case of prosecution before the Court and in view of the fact that the other person, namely Balan, before whom the accused said to have made confession statement is no more, the theory of extra judicial confession and the consequ ential recovery of MO.8, MO.9 and MO.10, cannot at all be accepted.

12. The other evidence relied on by the prosecution is PW.5, who is a Conductor in a Government owned Transport Corporation at Tiruppur. According to him, he worked as a Conductor in 8-D Town Bus, which was plying from Tiruppur to Kallipalayam on 27.0 5.2000. The ticket - MA 20068286 - Ex.P.5 was shown to him. No doubt, it is his claim that the said ticket relates to his bus. He also stated that the ticket could have been issued between 9.00 and 1 0 .00 p.m., on 27.05.2000. In his cross examination he has specifically stated that he took charge of the shift duty in the Town Bus route 8-D in the afternoon of 27.05.2000 and during his shift he did not issue Ex.P.5. He also admitted that on the previous day, i.e., 26.05.2000, after completing his sh ift in the forenoon, he returned to his house. It is not in dispute that the occurrence took place at 9.30 p.m., on 26.05.2000. If that is so, we are unable to understand how the evidence of PW.5 and Ex.P.5 support the case of prosecution. On going thr ough the same, we are satisfied that the evidence of PW.5 is not at all relevant to prove the case of prosecution.

13. According to the prosecution, PW.6 - father of the deceased and PW.18 neighbour, identified the deceased. A perusal of their evidence clearly shows that they identified only the photos shown by Inspector of Police - PW.20. Both of them admitted t hat they were not shown the body of the deceased. PW.6 in his chief examination has specifically stated that,

"Ma;thsh; vdJ kfs; fz;zk;khspd; g[ifg;gl';fis fhz;gpj;J vd;dplk; nfl;lhh;fs;/"

In cross examination he has stated,

"vdJ kfs; fz;zk;khspd; gpnujj;ij fhz;gpf;ftpy;iy."

PW.18 also admitted that only photographs were shown to her and not the dead

body of the deceased. In the absence of identification of the body of the deceased, particularly when the severed head was being preserved separately, we are of the view that t he mere identification of the photos of the deceased is not helpful to the case of prosecution.

14. The other witness heavily relied on by the prosecution is PW.19 , who is a resident of Nallathupalayam, Tiruppur. In his evidence, without mentioning any date he has merely stated that one day he travelled in a bus from Nallathupalayam to Somanur. He also stated that he used to travel in that route once in a week; he knows the accused who is his cousin brother. He has further stated that he knew the deceased, when she was alive. On going through the bald statement made by PW.19, we are afraid how his evidence is useful to the case of prosecution. It is not the case of PW.19 that a day prior to the occurrence he saw the accused and the deceased together. Even otherwise, he turned hostile and did not support the case of prosecution.

15. Though the learned Additional Public Prosecutor has contended that MO.8 and MO.9 contained blood group of the deceased, in the light of our conclusion that the recovery of those materials objects (MO.8 and MO.9) themselves from the accused is dou btful, we are unable to appreciate the said contention. Likewise, though the learned Additional Public Prosecutor pointed out the evidence of PW.6 and PW.7, who have spoken about the motive, that the accused suspected the fidelity of the deceased, PW.6 in his cross examination has stated,

(TAMIL PORTION DELETED)

16. We are satisfied that the circumstances relied on by the prosecution are not sufficient to establish the guilt of the accused. It is well settled that in a case dwelling on circumstantial evidence, the prosecution must establish all th nces by independent witnesses and the circumstances so established must form a complete chain in proof of the guilt of the accused beyond all reasonable doubts. The circumstances so proved must also be consistent with the guilt of the accused. In t he light of the principles laid down in the above referred to cases, we find that the circumstances relied on by the prosecution are not incriminating. In our case, as stated earlier even the last seen theory has not been proved beyond reasonable doubt. Though the death of the deceased was homicidal, since there is no direct witness connecting the accused with the crime, we should fall back from the circumstantial evidence and we are of the view that the circumstances relied on by the prosecution are hardly sufficient to establish the guilt of the accused.

In the light of what is stated above, we hold that the prosecution has failed to establish the guilt beyond reasonable doubt. Though prosecution has relied on circumstantial evidence, the same has not been established and there are many mis in the circumstances. The learned Sessions Judge failed to consider all these aspects and we are unable to concur with the conclusion arrived at by him. Accordingly, the conviction and sentence imposed on the accused / appellant is set aside and the cr iminal appeal is allowed. His bail bond shall stand cancelled.

Index :Yes
Internet:Yes
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To:

1. The Principal Sessions Judge,
Erode.

2. The Inspector of Police
Perundurai Police Station
Erode District.

3. The District Collector, Erode.

4. The Public Prosecutor, Madras.

5. The Director General of Police
Mylapore, Chennai

6. The Superintendent, Central Prison,
Coimbatore.